

10/3/12

Office of the Chief Clerk, MC 105, TCEQ

P.O. Box 13087

Austin, TX 78711-3087

Re: Reply to Responses by TCEQ/Executive Director, TCEQ/ Public Interest Counsel, and LCRA concerning application to amend Certificate of Adjudication No. 14-1913 by The Grumbles Bros. and LCRA.

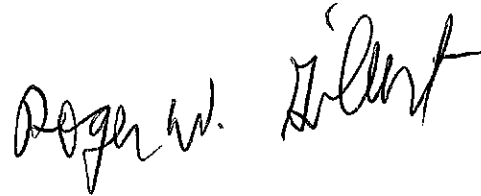
It seems that the main issue addressed by all three Responders is whether or not I qualify as an "affected person". It's not surprising that LCRA would be attempting to find grounds on which to disqualify me, so my comments are primarily directed to the other two Responders with no disrespect for LCRA intended at all. Though having the water provided me by my water rights when I chose to use it is paramount to me, that is not the main thrust of my request for "A Contested Hearing". This seems to be the main thing addressed by all three Responders, so I want to make it clear that this is not the case. As has been pointed out by the Responders my point of diversion is far upstream from The Grumbles Bros.'s point of diversion. Furthermore, my portion of the river is somewhat spring fed as apparently The Grumbles Bros.'s is also. So, my portion of the river is not likely to go dry. It never has in the 61 years that my family has owned this property. So, my concern about the application by The Grumbles Bros. and LCRA is not about availability of my water, it is a much bigger issue. It is the issue of control of my ability to use my water, and that of every other water rights holder in the state of Texas, the authority of TCEQ and it's ability to enforce its actions. The issue is the erosion of TCEQ's authority. TCEQ is tasked with monitoring and controlling the surface water in Texas. We must have a strong agency, TCEQ, which can take an action such as suspending water rights and be able to enforce it. If the application by LCRA and The Grumbles Bros. is approved, I believe TCEQ will have failed to enforce its suspension. Indeed, it would appear that TCEQ has already failed in that respect, since it seems that TCEQ approved the application on a temporary basis and LCRA was pumping water coming from the San Saba River during the water rights suspension. According to The Executive Director's response, "at various points during the drought (of 2011), 100 percent of the flow in the Colorado river downstream of the confluence of the two rivers came from the San Saba watershed". So, according to The Executive Director (LCRA was pumping water from the San Saba River) during TCEQ's suspension of water rights on the San Saba River. Sure, they weren't pumping it out of the San Saba, but only because TCEQ allowed them to pump it out of the Colorado river just 16 miles from the previously approved diversion point that is and was on THE SAN SABA RIVER where use of water rights with seniority dates 1900 and more recent was suspended (prohibited). If this application is approved permanently, this will happen again and again. It's not just speculative, it has already happened. If you let this happen, it sets a precedence of disrespect for the orders of TCEQ. How many others will do the same? How many times will LCRA do the same with other water rights holders? If TCEQ cannot or will not enforce its actions, our water rights are lost to the highest bidder or the most powerful organization that wants water. And, that will be many because the demand for water will be greater and greater while the supply will not drastically increase. So, in the future,

when I or my children or my grandchildren need water and there's none coming down the river and I or they are by then senior water rights, will TCEQ have the authority, the power to suspend water rights upstream from us to provide our water rights? I say no, they will not if they allow such a precedence of disrespect for TCEQ to be set. Speaking of water rights priority, my cattle's only source of water is the San Saba River. That is superior water rights. Now, am I an "affected person", "one who has a personal justiciable interest related to a legal right"? Of course, the answer is yes. My and my heirs' future with my ranch/farm depend on the state water controlling agency's ability to successfully actually control water.

Next, I must clear up some issues addressed by The Executive Director's response. It states that the requestor, that's me, did not include information about the requestor's distance relative to the proposed activity. I stated that my property, diversion point for my water rights, was approximately six miles east of Menard, Texas. I certainly think that is adequate, especially since no one should have a better knowledge of the rivers of Texas than TCEQ. Secondly, the senior priority calls that resulted in a suspension of some water rights on the San Saba were made in 2011 not 2012. That is significant since the suspension began in 2011, Aug. 8th and only lasted until 02/07/2012. Thirdly, these Jr. water rights were not quite so Jr. . They went all the way back to 1900. The Grumbles Bros.'s seniority date is 1932, so they are included in the suspension's time frame. The response refers to the suspension only affecting water rights upstream to the furthest downstream senior or superior water right that made a call on the San Saba. The letter from TCEQ dated 8/8/11 that informed all of us, with water rights on the San Saba, of the suspension was actually worded "Suspended water rights include water right permits with a priority date 1900 and later". There was no mention of location on the River, the suspension simply included all of the San Saba River. That is what the letter said. I still have it. So, begging the pardon of The Executive Director's office, with all due respect, the water rights suspension did affect The Grumbles Bros.. Fourthly, the response states that the lease agreement between the applicants was executed three months prior to the suspension. That may be true, but I don't see how that excludes The Grumbles Bros. from the suspension since the application to TCEQ was not administratively complete until much later, and notification of the application was not issued to all of us water rights holders until 09/12/11. Remember, the suspension went into effect 08/08/2011, well before their application was made available to us so that we could contest it. Again I say everyone, including The Grumbles Bros. and LCRA, must be required to comply with all the rules and restrictions issued by TCEQ. Otherwise, we cannot have an agency capable of developing and enforcing control of our surface water equally and fairly. Lastly I would say to The Executive Director "PEACE, I'M ON YOUR SIDE".

One last note, there looms over the San Saba River the issue of whether a Water master is needed. I think it is fair to say that the vast majority of water rights holders on the San Saba do not want a Water master, especially since we are all already struggling financially with our agricultural operations, and we would have to pay for that Water master and his or her staff. At the meeting with TCEQ, on that issue, that I attended in San Saba, Texas, I and others stated that we already had an agency perfectly capable of monitoring and controlling water usage on the San Saba River, TCEQ. I believe we, the majority, agreed that given adequate staff and authority, TCEQ could do the job just fine. No Water master was needed. It is my opinion that if LCRA and the Grumbles Bros. are

allowed to thumb their noses at TCEQ and circumvent or evade the water rights suspension that was imposed in 2011, it will fuel the fire to say that TCEQ can't manage surface water control as they are and need a Water master for watersheds like the San Saba River. That is untrue, and unfair to TCEQ and the thousands of Texas citizens served by The Texas Commission on Environmental Quality.

A handwritten signature in black ink, reading "Roger W. Gilbert". The signature is written in a cursive, flowing style with a large, stylized "G" at the end.

Roger W. Gilbert  
Certificate of adjudication No. 14-1821

# SEPTENNIAL

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